

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

ERIK ESTAVILLO,  
Plaintiff,  
v.  
DAVE CORTESE, et al.,  
Defendants.

Case No. 23-cv-04032-VKD

**ORDER DENYING PLAINTIFF'S  
MOTION FOR DEFAULT JUDGMENT**

Re: Dkt. No. 15

Mr. Estavillo moves for default judgment on the ground that defendants did not file an answer by the October 12, 2023 deadline. The motion is deemed suitable for determination without further briefing or a hearing.<sup>1</sup> *See* Civil L.R. 7-1(b). Mr. Estavillo's motion for default judgment is denied.<sup>2</sup>

Generally, an answer must be filed within 21 days after the service of the summons and complaint on defendants. Fed. R. Civ. P. 12(a)(1)(A)(i). Here, however, defendants are not in default because they instead timely filed a Rule 12(b) motion to dismiss the complaint (Dkt. No. 13). Rule 12 motions must be made before filing an answer and also extend the time for defendants to file an answer. *See* Fed. R. Civ. P. 12(b). If defendants' pending motion to dismiss


<sup>1</sup> Mr. Estavillo's motion, which he filed on October 12, 2023 and purported to notice for an October 24, 2023 hearing, is procedurally improper. All noticed motions must be filed on at least 35-days' notice in compliance with Civil Local Rule 7-2. *See* Civil L.R. 7-2(a) (requiring motions to "be filed, served and noticed in writing on the motion calendar of the assigned Judge for hearing not less than 35 days after filing of the motion.").

<sup>2</sup> All parties have expressly consented that all proceedings in this matter may be heard and finally adjudicated by a magistrate judge. 28 U.S.C. § 636(c); Fed. R. Civ. P. 73; Dkt. Nos. 11, 17.

1 is denied, and unless otherwise ordered, their answer will be due within 14 days after the Court  
2 provides the parties with notice of its decision on defendants' motion to dismiss. *See* Fed. R. Civ.  
3 P. 12(a)(4)(A).

4 **IT IS SO ORDERED.**

5 Dated: October 13, 2023

6  
7   
8 Virginia K. DeMarchi  
9 United States Magistrate Judge  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

United States District Court  
Northern District of California